



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 8, 1996

Mr. John Steiner
Division Chief, City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR96-2073

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101636.

The City of Austin (the "city") received a request for several categories of information concerning a specific request for proposal. You claim that the information is excepted from required public disclosure by sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.


The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you state that litigation is reasonably anticipated because an unsuccessful bidder has threatened to file suit regarding the matter. You further explain that the potential opposing party in the litigation has provided you with a copy of a draft complaint. Under these circumstances, we conclude that litigation is reasonably anticipated. After reviewing the submitted materials, we also find that the requested documents relate to the anticipated litigation. The city may therefore withhold the information under section 552.103.¹

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). For example, if the issued requests for proposal have been seen by the opposing party, they must be released. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 3 50 (1982). We note, however, that some of the requested information may be confidential and may not be released even after the litigation has concluded. *See, e.g.*, Gov't Code § 552.110; Open Records Decision Nos. 639 (1996) (commercial and financial information), 552 (1990) (trade secrets). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 101636

Enclosures: Submitted documents

¹Because we are able to make a determination under section 552.103, we do not address your arguments under sections 552.107 and 552.111.

cc: Mr. William Allensworth
Attorney at Law
620 Congress Avenue
Austin, Texas 78701
(w/o enclosures)